

REMARKS

Claims 1-52 and 73-98 are pending in the application. Claims 73-78 stand rejected under 35 U.S.C. 112, Second Paragraph, and claims 88 and 98 stand rejected under 35 U.S.C. 112, First Paragraph. Claims 1-52, 73-84 and 89-95 stand rejected under 35 U.S.C. 103(a) over Risen Jr. et al, U.S. Patent No. 6,018,714 ("Risen"), in view of Heckman et al Pre-Grant Pub No. 2003/0061075 ("Heckman"). Claims 85-88 and 96-98 stand rejected under 35 U.S.C. 103(a) over Risen, in view of Heckman, and further in view of Borghesi et al. U.S. Patent No. 5,950,169. These rejections are respectfully traversed for the reasons set forth below.

With regard to the Examiner's Section 112, Second Paragraph rejection, claim 73 has been amended to recite that the data model comprises software, in accordance with the Examiner's reading of the term. No new matter has been added. It is respectfully submitted that the rejection of claims 73-88 under 112, Second Paragraph has been obviated and should be withdrawn.

With regard to the Examiner's Section 112, First Paragraph rejection, although applicant strongly disagrees with the rejection, dependent claims 88 and 98 have been cancelled without prejudice. Applicant specifically does not waive or disclaim the subject matter of claims 88 and 98, and has cancelled the claims purely to expedite allowance of the application.

Independent claims 1, 73, and 89 are patentable over Risen in view of Heckman. These claims are directed to a computerized system and method which determines a value associated with a landscape architectural object, a change in the value of the landscape architectural object over a period of time, and a risk-of-loss to the landscape architectural object attributable to an eligible event that can occur over the time period. The system and method utilize the computer to determine a cost of an indemnity against a loss to the landscape architectural object from the eligible event over the time period based on the change in value and the risk-of-loss.

The Examiner acknowledges that the Risen reference does not disclose a system or method for landscape architectural objects. It is respectfully pointed out that Heckman also does not disclose a system or method for landscape architectural objects.

Heckman discloses methods for rating and structuring crop insurance. Crops are not architectural objects at all, much less landscape architectural objects. Indeed, Heckman is directed to the field of agriculture, which is a different field than the present invention. The Federal government, through the USDA's Risk Management Agency (RMA) and the Federal

Crop Insurance Corporation (FCIC), a body which is operated and managed by the RMA, has limited the term 'crop' to a finite list of agricultural commodities for which a commercial market exists, i.e., oranges, apples.

On the other hand, the term 'landscape architectural objects' as understood in the art, as recited in the present claims, and as disclosed in the present specification, relates to, *inter alia*, 'plantings' such as trees and 'any of a kingdom of living things'. Landscape architectural objects as understood in the art specifically do not include crops, which are neither architectural objects nor landscape architecture.

Moreover, rating risk and providing insurance coverage for a marketable commodity such as crops, that are produced in order to be traded and subsequently consumed, is entirely different from doing so for a living organism such as a tree that is a fixed asset which appreciates over time. The methods of valuing these different asset classes, determining the risk factors that can impact their value and numerous other parameters that determine the risk-of-loss and an indemnity against a loss, are intrinsically different and the RMA, as well as federal legislation pertaining to crops, i.e., The Farm Bill, define 'crops' to the exclusion of anything that would constitute a landscape architectural object. The essence of crop insurance focuses on the risks borne by a producer of agricultural production. Ascertaining the production value of a crop, as per Heckman's disclosed method, is fundamentally distinguished from the present invention, which determines for example the insurable value of a stand of Oak trees, or a singular Oak tree, that provides aesthetic and other value to a property. There is no correlation between the two and the Application is purposed to implement a regime for rating, valuing and insuring fixed and living landscape assets based on their intrinsic value.

The FCIC, a body operating in strict compliance with Federal legislation, and which is tasked with providing crop insurance to American producers, uses Actual Production History (APH) prices to determine the values of crops. Heckman is directed to a derivative of that methodology to structure crop insurance more efficiently. Trees and landscape are valued in an entirely different method and the Council of Tree and Landscape Appraisers (CTLA) Guide sets forth a methodology for determining value of trees and shrubs that is based on their genus, species, height or trunk diameter, as well as condition, location and species ratings. There is no similarity in these methods and there is no logical derivation of one method from the other.

The Examiner states in Paragraph 11 of the Office Action that one of ordinary skill in the art would “combine the teachings of Risen and Heckman in order to determine insurance coverage for a land or field”. Applicant disagrees for the reasons set forth above. Furthermore, it is respectfully submitted that the present invention relates to systems and method for insuring landscape architectural objects, such as trees, which are neither a land nor a field. Nor are landscape architectural objects a commodity produced for consumption.

Each element of each of applicants’ independent claims recites landscape architectural objects, as does the preamble. Because Heckman relates to crops, which are not architectural objects at all, Heckman teaches none of those elements. Risen, as recognized by the Examiner, also does not teach systems and methods for landscape architectural objects, and therefore teaches none of those elements.

It is well established that, in order to show obviousness, all limitations must be taught by the prior art. In Re Royka, 180 U.S.P.Q. 580, 490 F.2d 981 (CCPA 1974); MPEP § 2143.03. It is error to ignore specific limitations distinguishing over the references. In Re Bog, 184 U.S.P.Q. 38, 505 F.2d 1297 (CCPA 1974); In Re Saether, 181 U.S.P.Q. 36, 492 F.2d 849 (CCPA 1974); In Re Glass, 176 U.S.P.Q. 489, 472 F.2d 1388 (CCPA 1973).

For the above reasons alone, Risen and Heckman cannot render the claimed invention obvious. Furthermore, a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. KSR Int’l Co. v. Teleflex, 127 S.Ct 1727, 1741 (2007). As former Chief Judge Markey of the Federal Circuit has stated, “virtually all inventions are ‘combinations’, and ... every invention is formed of ‘old elements’ Only God works from nothing. Man must work with old elements.” H.T. Markey, *Why Not the Statute?* 65 J. Pat. Off. Soc’y 331, 333-334 (1983). The factfinder should be aware of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. KSR Int’l Co. v. Teleflex, 127 S.Ct at 1742. In determining whether a claimed invention is an obvious combination of prior art references, it must be shown there is an apparent reason to combine the known elements in the fashion claimed. Id. at 1741. To facilitate review, this analysis should be made explicit. Id.

The Examiner has further not shown any need or problem known in the field and addressed by the present application that can provide a reason for combining the elements of the Risen and Heckman references in the manner claimed. KSR Int’l Co. v. Teleflex Inc., 127 S.Ct.

1727, 1742 (2007). It is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.” KSR v. Teleflex, 127 S.Ct. at 1731.

It is submitted that claims 1-52 and 73-98 are in condition for allowance, and Notice to that effect is respectfully solicited. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, she is courteously requested to contact applicant's undersigned representative.

AUTHORIZATION

The Commissioner is authorized to charge any additional fees associated with this filing, or credit any overpayment, to Deposit Account No. **50-2638**. If an extension of time is required, this should be considered a petition therefor.

Respectfully submitted,

/Richard E. Kurtz/Reg. #33,936

Richard E. Kurtz
Reg. No. 33,936
Attorney for Applicant
GREENBERG TRAURIG
2101 L Street, NW Suite 1000
Washington, DC 20037
(407) 420-1000
E-mail: kurtzr@gtlaw.com

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